

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1584  
 SPONSOR: Education Committee and Senator Villalobos  
 SUBJECT: Educational Facilities  
 DATE: February 25, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Farrell	O'Farrell	ED	Favorable/CS
2.	_____	_____	AED	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The bill revises several sections of ch. 235, F.S., to make them consistent with the changes being made in the education governance structure. In addition, the sections of the chapter addressing building codes and emergency shelters have been amended to conform to the new Florida Building Code. Those sections of ch. 235, F.S., scheduled for repeal January 7, 2003, subject to legislative review, are reenacted as amended

This bill amends sections 235.011, 235.017, 235.02, 235.04, 235.056, 235.06, 235.061, 235.155, 235.18, 235.19, 235.192, 235.193, 235.211, 235.215, 235.2155, 235.16, 235.26, 235.31, 235.32, 235.3215, 235.34, 235.40, 235.435, and 235.4351; reenacts and amends sections 235.014, 235.05, 235.057, 235.15, 235.195, 235.199, 235.41, and 235.42; and creates section 235.261 of the Florida Statutes.

## II. Present Situation:

Chapter 235, F.S., Educational Facilities, creates the policy framework for constructing and maintaining educational facilities for all levels of public education in the state. It provides uniform standards and procedures for determining public educational facility needs; planning, constructing, remodeling, and maintaining facilities; acquiring sites and facilities; disposing of facilities; distributing state capital outlay funds to school districts, community colleges, and state universities; and accounting for expenditures of both state and local capital outlay dollars. The roles and responsibilities regarding educational facilities are spelled out for the State Board of Education, local school boards, and public postsecondary institutional boards and systems. Since the mid 1990s, the Department of Education has become less regulatory in the area of facilities and more of a technical assistance agency. Chapter 235, F.S., reflects this change by providing

school boards and postsecondary institutions with more authority in the construction, maintenance, and remodeling process.

In November 1998, Florida voters approved changes in the State Constitution that mandate, effective January 7, 2003, the state's public education system be led by an appointed rather than elected State Board of Education, and by a Commissioner of Education appointed by the new board. The Legislature responded to the constitutional changes by enacting the Florida Education Governance Reorganization Act of 2000 (Ch. 2000-321, L.O.F.) which, among other things, provides for the January 7, 2003, repeal of several chapters and sections of the Florida School Code, subject to prior legislative review. Included among the laws destined for sunset if not reenacted by the Legislature are eight sections of ch. 235 F.S.:

- s.235.014, F.S., Functions of the department
  
- s.235.05, F.S., Right of eminent domain
- s.235.057, F.S., Purchase, conveyance, or encumbrance of property interests above surface of land; joint-occupancy structures
- s.235.15, F.S., Educational plant survey; localized need assessment; PECO project funding
- s.235.195, F.S., Cooperative development and use of facilities by two or more boards
- s.235.199, F.S., Cooperative funding of vocational educational facilities
- s.235.41, F.S., Legislative capital outlay budget request
- s.235.42, F.S., Educational and ancillary plant construction funds; Public Education Capital Outlay and Debt Service Trust Fund; allocation of funds.

The 2001 Legislature enacted the Florida Education Governance Implementation Act (Ch. 2001-170, L.O.F.) which, among other things, repealed the Board of Regents and established boards of trustees for each of the newly independent state universities. The state was also in the process of implementing a new uniform building code that would include sections governing public school and postsecondary institution construction. The combination of all of these factors: the pending repeal of several sections of ch. 235, F.S., the restructuring of education governance to embrace a K-20 philosophy, creating independent state universities, and implementing a new building code more than warranted a review of all sections of the laws on educational facilities contained in ch. 235, F.S.

Beginning in the Summer of 2001 staff from the Senate Appropriations, Comprehensive Planning, Local and Military Affairs, and Education Committees, the House of Representatives, the Governor's Office, and Department of Education personnel representing universities, community colleges, and the Office of Educational Facilities participated in a comprehensive review of ch. 235, F.S.. The purpose of the exercise was the identification of necessary technical amendments to accommodate the upcoming changes in the organization and governance of public education and the mandatory review of those sections of ch. 235, F.S., that will repeal January 7, 2003, unless reenacted or amended or reenacted by the Legislature. The review process was generally guided by four principals adapted from the Florida Education Governance Implementation Act (Ch. 2001-170, L.O.F.):

- Recommendations will support an articulated, coordinated K-20 education system.
- Recommendations will focus on the student and access to education.
- Recommendations will not jeopardize equity.
- Recommendations will support local flexibility and decision making.

The contents of SB 1584 reflect the consensus recommendations of the review working group.

### **III. Effect of Proposed Changes:**

Most of the changes made to ch. 235, F.S., by SB 1584 are technical in nature and involve conforming to modifications in the education governance structure and conforming to related changes made in other chapters of the School Code. The most significant of these would be the shift of colleges and state universities from state agency status to a local entity. That change led to a new definition of the term board for ch. 235, F.S., purposes and the several amendments that generated.

A section by section analysis of the bill follows. In most cases the present situation and the effects of the proposed changes are described briefly. In some instances, however, when the only change is conforming language, that will be indicated.

#### **Section 1. Amends s. 235.011, F.S., Definitions**

##### **Present Situation**

The section defines terms related to educational facilities that are used throughout ch. 235, F.S. Some of the current definitions do not reflect the changes in education governance enacted by ch. 2000-321, L.O.F. and ch. 2001-170, L.O.F. In particular, the term “board” includes local school boards, community college boards of trustees, and the Board of Trustees for the Florida School for the Deaf and the Blind. The definition does not include the Board of Regents or the State Board of Education.

##### **Effect of Proposed Changes**

References to the Board of Regents are deleted and replaced with references to college and university boards of trustees, and, for purposes of ch. 235, F.S., college and university boards are included within the definition of the term “board” unless specifically excluded. Other definitions are clarified to provide that: educational plant surveys will determine future facilities needs based on Department of Education projections of capital outlay FTEs, long-range planning means a plan to meet the facilities needs of the education agency for a 5-year period, new construction includes building additions which add square footage to the space inventory, and Public Education Capital Outlay funded projects includes site acquisition, renovation, remodeling and construction projects.

#### **Section 2. Amends and reenacts s. 235.014, F.S., Functions of the department**

##### **Present Situation**

The section describes the functions of the Department of Education, including: establishing facility size and use standards and information reporting requirements, administration of the Public Education Capital Outlay and Debt Service Trust Fund and the School District and Community College District Capital Outlay and Debt Service Trust Fund, providing training and technical assistance to boards, and validating facilities needs surveys. As to the survey validation process, since the downsizing of the Office of Educational Facilities within the Department of Education in 1995, the office no longer has the personnel necessary to perform the validations.

### **Effect of Proposed Changes**

Conforms language to the changes in education governance, and acknowledges the new Florida Building Code and Florida Fire Prevention Code. The proposed language further provides that the mandatory portion of the Florida Building Code for construction and improvement of educational facilities pertains only to school boards and community college boards of trustees. Colleges and state universities are subject to another section of the code. In addition, college and university boards of trustees are authorized to approve specifications and construction documents for their own institutions.

### **Section 3. Amends s. 235.017, F.S., Compliance with building and safety codes**

#### **Present Situation**

Requires school boards and community college boards of trustees to ensure that all new construction under their jurisdiction meets the appropriate building and safety codes. The boards may use their own employees to do conduct the necessary compliance reviews as long as the employees are registered engineers or architects, they may contract with registered engineers or architects to perform the service, or they may submit the phase III construction documents to DOE for review. The Department of Management Services will provide review services for the Florida School for the Deaf and for the Blind at the school's request.

#### **Effect of Proposed Changes**

College and state university boards of trustees are now subject to the requirements of this section as a result of being included in the new definition of the term board; however, they must conform to those sections of the Florida Building Code and the Florida Fire Prevention Code appropriate to their institutions. In addition to registered architects and engineers, boards may use building code administrators and inspectors certified under part XII of ch. 468, F.S., to conduct the required code reviews. The bill also authorizes DMS to conduct reviews for the Division of Blind Services and Public Broadcasting facilities plans and construction upon request.

### **Section 4. Amends s. 235.02, F.S., Use of buildings and grounds**

Conforming language. The term "Board of Regents" is deleted.

### **Section 5. Amends s. 235.04, F.S., Disposal of property**

#### **Present Situation**

Authorizes school boards and community college boards of trustees to dispose of real property subject to the rules of the Commissioner of Education

#### **Effect of Proposed Changes**

The new definition of board includes university boards of trustees in this section. Rules for property disposal would be adopted by the State Board of Education rather than the commissioner. This latter change is consistent with other changes in the School Code restricting rule making authority to the state board

### **Section 6. Amending and reenacting s. 235.05, F.S., Right of eminent domain**

#### **Present Situation**

Community college boards of trustees and the Board of Regents may exercise the right of eminent domain with approval of the State Board of Education.

#### **Effect of Proposed Changes**

Reference to the Board of Regents is deleted and the power of eminent domain is extended to university boards of trustees with approval of the State Board of Education.

**Section 7. Amending certain subsections of s. 235.056, F.S., Lease, rental, and lease-purchase of educational facilities**

Conforming language acknowledging the new definition of the term “board,” the new Florida Building Code and Florida Fire Prevention Code, and the restriction of state level rule making authority to the State Board of Education. Lease agreements entered into by college and state university boards of trustees must comply with s. 243.151, the section of law that authorizes colleges and universities to enter into lease agreements.

**Section 8. Amending and reenacting s. 235.057, F.S., Property interests above surface of the land; joint occupancy structures**

Conforming language, replaces Board of Regents with university boards of trustees.

**Section 9. Amends s. 235.06, F.S., Safety and sanitation standards and inspection of property****Present Situation**

The law authorizes the Commissioner of Education to adopt rules prescribing standards for the health and safety of occupants of school board and community college facilities. The boards have to provide for periodic health and safety inspections of facilities. The Department of Education or any other state or local government agency authorized to conduct such inspections may inspect school district or community college facilities at any time; however, they must use the health and safety standards adopted by the Commissioner of Education. The commissioner may take appropriate action as necessary to assure that district or community college corrects any deficiencies noted during an inspection.

**Effect of Proposed Changes**

The proposed changes reference the new Florida Building Code, and restrict rule making authority to the State Board of Education. The bill restricts the statutorily required inspections to school board and community college facilities, and provides that colleges and state universities will conduct fire and safety inspections according to State Board of Education rules.

**Section 10. Amending subsection (1) of s. 235.061, F.S., Standards for relocatables**

Conforming language, requires compliance with state requirements for educational facilities instead of the Uniform Building Code for Public Educational Facilities.

**Section 11. Amending and reenacting s. 235.15, F.S., Educational plant survey**

Conforming language. Modifications to the section reflect the changes in terminology to conform with changes in the education governance structure and the move to the Florida Uniform Building Code, and deletes obsolete language.

**Section 12. Amending s. 235.155, F.S., Exceptions to educational plant survey recommendations****Present Situation**

If a public education board deems it will be advantageous to the educational system or will save money to make an exception to the educational plant survey, it must present a full statement of supporting facts to the Commissioner of Education. There is no requirement for approval by the Commissioner for a board to make the exception.

**Effect of Proposed Changes**

Boards seeking a plant survey exception must report supporting facts to the State Board of Education for approval.

**Section 13. Amending s. 235.18, F.S., Annual capital outlay budget**

Clarifying language.

**Section 14. Amending s. 235.186, F.S., Effort index grants****Present Situation**

In a Special Session on public school capital outlay issues, the 1997 Legislature created the Effort Index Grant Program. The Legislature appropriated \$300 million from bond proceeds to provide state assistance to school districts with unmet need for classroom facilities. Districts were eligible to receive funding for new construction after they met a specified level of local effort in capital outlay revenue and expenditures. All the funds have now been encumbered.

**Effect of Proposed Changes**

The bill would strike the current Effort Index Program and replace it with a similar grant program for school districts with a high growth in student enrollment. The purpose of the new program is to provide resources to high growth districts whose tax bases generate revenues insufficient to keep pace with their rate of growth. The proposed program contains similar local effort requirements on the part of school districts in order for them to qualify for the grants. Funding for this program will have to be provided in the General Appropriations Act.

**Section 15. Amending s. 235.19, F.S., Site planning and selection**

Clarifies that the section applies to school boards and community college boards of trustees. Also, rule making authority is restricted to the State Board of Education.

**Section 16. Amending s. 235.192, F.S., Coordination of school safety information****Present Situation**

District school superintendents and community college presidents are required to provide local law enforcement agencies with floor plans and relevant documents for each facility under their administration.

**Effect of Proposed Changes**

College and university presidents would be required to provide facilities floor plans and related documents to local law enforcement agencies.

**Section 17. Amending s. 235.193, F.S., Coordinating planning with local governing bodies****Present Situation**

The section currently applies only to local school boards.

**Effect of Proposed Changes**

The section is amended to make it apply to all boards, school district, community college, college, and state university; however, for colleges and state universities, campus master plans and development agreements must conform to ss. 240.155 and 240.156, F.S., which pertain to concurrency agreements.

**Section 18. Amending and reenacting s. 235.195, F.S., Cooperative development and use by two or more boards**

Conforming language. Changes terminology to reflect changes in the education governance structure. Also, the name of the Postsecondary Education Planning Commission is changed to its new name, the Council for Policy Research and Improvement.

**Section 19. Amending and reenacting s. 235.199, F.S., Cooperative funding of vocational educational facilities**

Conforming language. The title of Division of Workforce Development is changed to the Office of Workforce and Economic Development. The change is consistent with the changes in educational governance.

**Section 20. Amending s. 235.211, F.S., Educational Facilities contracting and construction techniques**

Conforming language. A cross reference is corrected and rule making authority is restricted to the State Board of Education.

**Section 21. Amending s. 235.215, F.S., Energy efficiency contracting**

Conforming language. School districts, community colleges, and state universities are subject to this law. The amendment adds state colleges to the list.

**Section 22. Amending s. 235.2155, F.S., School Infrastructure Thrift Program Act**

Deletes obsolete language.

**Section 23. Amending s. 235.216, F.S., SIT Program award eligibility**

Deletes obsolete language. Charter school eligibility to share in SIT awards ended in 2000.

**Section 24. Amending s. 235.26, F.S., State uniform building code for public educational facilities****Present Situation**

A statewide building code for the planning and construction of school district and community college facilities is to be adopted by the Florida Building Commission for inclusion in the Florida Building Code. It is a responsibility of the Department of Education to adopt for inclusion in the uniform building code, standards for: prefabricated facilities, sanitation, safety, accessibility for children, and the performance of life-cycle analyses on alternative designs to evaluate energy efficiencies.

Facilities constructed by school boards and community college boards of trustees must comply with the Florida Building Code and the Florida Fire Prevention Code, with the exception of ancillary structures not attached to educational facilities, and are exempt from other state and local building codes. It is the responsibility of the school boards and community college boards to ensure that all plans and facilities comply with the new codes. If a facility project costs more than \$200,000, a board may submit the plans to DOE for approval. Plans must be approved locally for code compliance before a contract can be let for construction of the new facility. School boards and community college boards may not occupy a new facility until it has been inspected to verify the health and safety of occupants. The Department of Education is required to review the Florida Building Code and make recommendations to the Florida Building

Commission for updates and revisions. The Department is also required to develop emergency shelter standards for inclusion in the Florida Building Code that will ensure that the core area of new educational facilities can serve as public shelters for emergency management purposes. Local legislation that would alter any provisions of the Florida Building Code are prohibited.

**Effect of Proposed Changes**

Terminology is changed to reflect the changes in education governance, and the March 1, 2002 adoption date of the uniform building code for the planning and construction of school district and community college facilities in the Florida Building Code is included. Subsection (8) of the law pertaining to education facilities as emergency shelters is struck and will be replaced by a new section of law, s. 235.261, F.S.

**Section 25. Creating s. 235.261, F.S., Education facilities as emergency shelters**

Rewrites the emergency shelter requirements of s. 235.26, F.S., as a separate section and uses the new definition of board to include colleges and state universities.

**Section 26. Amending s. 235.31, F.S., Advertising and awarding contracts**

Conforming language. Uses the new definition of board to extend the laws provisions for advertising and awarding contracts for: the construction, remodeling, renovation, demolition, or improvement of educational facilities, prequalifying bidders, and dealing with emergency facility situations to colleges and state universities. Also, the amended language restricts rule making authority to the State Board of Education.

**Section 27. Amending s. 235.32, F.S., Substance of contract**

Conforming language. Restricts rule making authority to the State Board of Education.

**Section 28. Amending s. 235.3215, F.S., Toxic substances in construction**

**Present Situation**

The section pertains to school districts, and requires contractors to notify the district superintendent at least 3 days in advance of using a toxic substance as enumerated on the Florida Substance List. The superintendent must make sure the contractor complies with safety precautions and that no students, employees, or members of the general public are endangered.

**Effect of Proposed Changes**

The legislation extends the requirements of the section to the presidents of public postsecondary institutions. The provision that the district superintendent take action to protect students, employees, and the public is deleted. The superintendent should not have sole responsibility for resolving problem situations. Obsolete language is also deleted.

**Section 29. Amending s. 235.34, F.S., Expenditures authorized**

Simplifying language. Editorial change that includes all education boards under the term board rather than listing them, and authorizes such boards to separately or with local governments spend funds for infrastructure improvements in areas contiguous to a educational plant.

**Section 30. Amending s. 235.40, F.S., Radio and television facilities**

Conforming change. Deletes a reference to the Board of Regents.



**Section 31. Amending and reenacting s. 235.41, F.S., Legislative capital outlay budget request**

Conforming language. Amends terminology to conform to the changes in education governance and the repeal of the Board of Regents and the State Board of Community Colleges. Colleges, state universities, and community colleges continue to be subject to the provisions of the section through the expanded definition of the term “board.”

**Section 32. Amending and reenacting s. 235.42, F.S., Educational and ancillary plant construction funds****Present Situation**

This is the section of law directing the Commissioner of Education, through the Department of Education, to administer the Public Education Capital Outlay and Debt Service Trust Fund.

**Effect of Proposed Changes**

No substantive changes are made to this section. Conforming changes are made to reflect changes in education governance and the new, all inclusive definition of the term “board.”

**Section 33. Amending s. 235.435, F.S., Funds for comprehensive educational plant needs****Present Situation**

This section of law provides the procedures for allocating Public Education Capital Outlay and Debt Service Trust Fund (PECO) dollars to the various education boards for capital outlay projects.

**Effect of Proposed Changes**

Changes are made in terminology to reflect the changes in education governance and the new, inclusive definition of the term “board.” Also, clarify changes are made and obsolete dates are deleted. Substantive changes include a revised procedure for calculating capital outlay FTE enrollment growth. The procedure in current law is dated. The new formula establishes the fourth prior year membership as the base year, membership for the immediate prior year is then used to compute growth over the highest membership of the three preceding years. The process then continues, always using the most recent 4-year capital outlay full-time membership data. The current paragraph describing what happens when capital outlay full-time membership declines is deleted. The capital outlay project priority list for postsecondary institutions would be submitted to the Legislature 90 days prior to the legislative session rather than the current 45 days. Provision for establishing the Increased Utilization Account within PECO is deleted. The account is no longer funded.

**Section 34. Amending s. 235.4351, F.S., Waivers from certain requirements****Present Situation**

The Commissioner of Education is authorized to adopt rules for providing waivers to school districts from the statutory requirements for plant surveys, need projections, and cost ceilings. Districts may request waivers for projects for which no state money is spent, and if they can certify that all facilities space needs for the next five years can be met from anticipated capital outlay revenue or alternative methodologies that reflect good management.

**Effect of Proposed Changes**

The State Board of Education rather than the Commissioner of Education would be authorized to adopt rules for providing waivers.

**Section 35. Effective date**

The bill's effective date is July 1, 2002.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:****C. Government Sector Impact:**

The changes at the postsecondary board level may create an initial increase in administrative costs; however, this should level out as procedures are implemented and become operational. In the long run the changes may result in increased efficiency and more effective fund use.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.